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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,845	03/12/2004	Klaus Lidolt	03100199AA	5020
30743 7590 05/29/2008 WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C. 11491 SUNSET HILLS ROAD SUITE 340 RESTON, VA 20190				
EXAMINER JACKSON, BRANDON LEE				
ART UNIT		PAPER NUMBER		
3772				
MAIL DATE		DELIVERY MODE		
05/29/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/798,845

Applicant(s)

LIDOLT ET AL.

Examiner

BRANDON JACKSON

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This action is in response to amendments/arguments filed 2/28/2008. Currently, claims 1-15 are pending in the instant application.

Response to Arguments

Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection. Applicant argues the Stark device is not capable of being locked or unlocked, and therefore cannot produce a signal for a locking state. However, Stark discloses a break/clutch mechanism (i.e. lock) (21a) controlled by a brake button on a control unit (10"), wherein the break/clutch mechanism (21a) is capable of allowing or preventing the armature (47a) from turning. When the armature (47a) cannot rotate the two parts (6ab", 6aa") are not able to rotate relative to one another (i.e. locked state). Further, Applicant argues Stark fails to disclose a predetermined relative position for locking. However, Stark inherently has a predetermined position for locking because the user may choose a position to lock the two parts in relative to one another prior to initiated the locking device via the control unit when the predetermined position has been reached and the predetermined position is monitored by sensor/gauge (60'). Moreover, that predetermined position has a certain amount of load that would be borne by the user and by the device. Applicant argues Stark fails to disclose sensors for detecting the locking or unlocking state of the device. However, the Stark device is capable of monitoring all the parameters of the device, which would include whether the brake/clutch mechanism (21a) is engaged or

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disengaged; inherently sensing whether the device is locked or unlocked. Moreover, there inherently must be a sensor that detects the locked or unlocked state of the device because the control unit (10) displays whether or not the brake/clutch mechanism (21a) is engaged. Lastly, Applicant argues the graphic display (76) and the piezo audio alarm (78) would not provide a warning signal of when the device is locked or unlocked and would have no reason to do so. However, it would be beneficial for the user to know when the brake/clutch mechanism (21a) is engaged or not engaged in order for the user to know whether to try to move the leg or not, much like how a car signals the user when the parking brake is engaged to prevent unnecessary damage to the car, or the user's leg in this case. Moreover, the control unit is a CPU and therefore can be programmed to provide warning signals for any desired parameters, such as locking state, by the user.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent., and therefore cannot produce a signal for a locking state.

Claims 1-5, 7, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Stark et al. (US Patent 6,184,797). Stark discloses an orthopedic aid (2") with two parts (6ab", 6aa") which are movable relative to one another and with a locking device (21a) for locking the two parts (6ab", 6aa") in order to permit movement of the parts

(6ab", 6aa") with respect to one another, wherein a signaling arrangement (76, 78, 77) is provided which emits a particular indicator or warning signal (76, 78, 77), responsive to means for detecting (fig. 15) the locking or unlocking of the device and alerting the user. The means for detecting (fig. 15) would be able to detect the state of the lock because it detects the position and all the parameters of the device, which would include the state of the locking device (21a) because it would indicated whether the break/clutch mechanism (41a) is engaged or not. The orthopedic aid (2") comprises a detection arrangement (4") provided for detecting the state of the two parts (6ab", 6aa") and for emitting a signal indicating the state. The orthopedic aid (2") would be fully capable of emitting a signal upon unlocking of the locking device (21a). The signal can be visual (76), acoustic (78), and mechanical (77). The detection arrangement (4") generates the signal electrically (fig. 15). The locking device (21a) is electromechanical. The locking device (21a) can be actuated by a wireless signal (col. 4, lines 50-53). Stark inherently has a predetermined position for locking because the user may choose a position to lock the two parts (6ab", 6aa") in relative to one another prior to initiated the locking device via the control unit when the predetermined position has been reached and the predetermined position is monitored by sensor/gauge (60'). Moreover, that predetermined position has a certain amount of load that would be borne by the user and by the device. This load can be determined by the strain gauges (8") on the aid (2").

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 6 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stark et al. (US Patent 6,184,797) in view of Doty (US Patent 7,235,058). Stark substantially discloses the claimed invention; see rejection to claim 1 above. Stark further discloses a stator coil (45a) that can have a current pass through it to create a magnetic field to attract the brake and lock the hinge (21a) in place. However, Doty teaches a hinge (20) comprising a movable locking pin (106) that locks the hinge (20) in place. Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the braking system to have a locking pin, as taught by Doty, instead of the current breaking mechanism in order to prevent slippage of the hinge when it is intended to be in the locked position.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stark et al. (US Patent 6,184,797) in view of Naft et al. (U.S. Patent Application Publication 2002/0183673). Stark substantially discloses the invention as claimed, see rejection of claim 1 above, however Stark fails to disclose an electromagnetic actuating arrangement with a low actuating force of not more than 2N; the locking mechanism cannot be unlocked by the actuating arrangement on account of frictional forces. However, Naft teaches an electromagnetic arrangement that operates at with relatively low electromagnetic attraction forces (paragraph 0050, lines 1-5). Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the joint of Stark with that taught by Naft in order to allow the joint to operate with low power consumption from the battery.

Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stark et al. (US Patent 6,184,797). Stark substantially discloses the claimed invention; see rejection to claim 11 above. Stark further discloses a handgrip (10") that triggers actuating signals of a walking aid (fig. 11). The transmission is transported by wires (fig. 11), however, it would be obvious to one of ordinary skill in the art at the time for the invention to modify the cable to be a wireless transmitting means because it requires only routine skill in the art to replace wires with wireless transmitting signals in order to eliminate potential for tangled wires.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Krahner et al. (US Patent 6,436,058).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDON JACKSON whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brandon Jackson/
Examiner, Art Unit 3772

BLJ

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772